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Confidential Settlement Negotiations

Ms. Karen Torrent
Department of Justice
Environment and Natural Resources Division
Environmental Enforcement
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: Monsanto/Solutia's Proposal for Settlement of Costs

Dear Tom and Karen:

This letter transmits Monsanto/Solutia's proposal for settling past costs. In order to arrive at the number we are proposing, we did a systematic review of information available to us. See attached information.

We have reviewed the costing documents you sent. Obviously we do not have enough back-up documentation to know what each EPA person did relating to Area 1 and if their time was properly allocated to Area 1. Our review identified entries that appear to relate to Area 2. Despite this fact, for this proposal we have assumed the time was properly allocated. This offer is not a waiver of any potential defenses regarding those costs for which we had inadequate documentation.

Nearly half of the general Area 1 costs are from the Ecology and Environment ("E&E") ARCS Contract #68-W8-0086. We have a copy of the contract in our file. E&E had four specifically delineated tasks under that contract which were: 1) Search for property ownership for Area 1 and Area 2 sites and supply the information in a report and in maps; 2) organize and evaluate existing technical data for each sub-unit of the

sites and for groundwater at each site; 3) draft a memorandum which summarizes gaps in technical data; and 4) PRP records compilation including setting up PRP files, developing a PRP database and developing a list of all persons linked to waste disposals for a particular PRP. After review of these tasks coupled with our knowledge of E&E's final work product, this work appears to either be redundant or of little value to the ongoing effort set forth in the AOC. There are significant gaps in the E&E work product, misstatements, and missing information. We have identified some of the more significant data gaps in our earlier correspondence with you concerning PRPs such as Kerr McGee and the CWS. EPA can only recover costs that are not inconsistent with the NCP.

In the Sauget Sites' SOW for the RI/FS and EE/CA, EPA is requiring that Monsanto/Solutia analyze the currently available data to determine the areas of the Site which require additional data. This work is duplicative of the work done by E&E (task 3 above). Such duplicative work is not consistent with the NCP. *See, United States v. Iron Mountain Mines, Inc. et al.*, 987 F. Supp. 1263 (E.D. Ca. 1997).

In addition, while the government may be entitled to recover costs for searches it does to identify PRPs, it is unfair and arbitrary for EPA to ask Monsanto/Solutia to pay for costs when Monsanto has never denied its Area 1 responsibility and the government already had sufficient information of Monsanto's property ownership and PRP status. Further, even before the contract for the E&E work was entered in 8/97, Monsanto was attempting to negotiate investigatory work on a voluntary basis for Area 1 with IEPA. Thus, any search or work regarding Monsanto was of little or no assistance to EPA.

The E&E PRP search should be recoverable from the other Special Notice Letter recipients who are refusing to respond. Therefore, unlike in the case of Monsanto/Solutia, the E&E information, to the extent it is complete, will be needed to pursue recalcitrant PRPs. They are the parties who should pay for this work.

Based on all the above, Monsanto does not believe that any of the E&E costs incurred under the ARCS contract should be included in the costs being sought from Monsanto.

Nevertheless, for purposes of settlement, we have considered all of the government's cost, and are agreeable to pay up to $100,000 to settle all past cost liability. We make this offer, despite the fact that our clients are obligated under the AOC to pay all of

the future oversight costs related to the EE/CA and the RI/FS. These future costs relate to Site G as well as Area 1.

We look forward to discussing this further with you after you have had a chance to review it.

Very truly yours,

Thompson Coburn

By
Joseph G. Nassif
Linda W. Tape

JGN/on

cc: Mr. Brent Gilhousen
Mr. Michael Foresman
Mr. Michael Light
Ms. Linda Tape

EPA RECOVERABLE COSTS INCURRED TO DATE:

Based on the discussion set forth in the attached letter, the total costs that are recoverable for EPA under the NCP are the following:

Site G (1995 removal)

EPA internal costs:	$203,179.74
EPA contractor costs	$409,692.94
IEPA cooperative agreement	$ 7,957.00
TOTAL	$620,829.68

Area 1 (minus Site G 1995 removal)

EPA internal costs	$ 98,718.87
EPA contractor costs	
E&E*	$104,382.82
IEPA Cooperative Agreement	$ 13,998.00
TOTAL	$217,099.69

ADJUSTMENTS TO EPA RECOVERABLE COSTS

Based on various factors, the EPA recoverable costs should be adjusted as set forth below:

Site G

As has been mentioned in prior submissions to Tom Martin, copy attached, there is inadequate evidence to impose CERCLA liability on Monsanto for Site G cleanup costs. Materials found at Site G that are directly traceable to Monsanto are only trash. *See* attached memo.

Many other known parties have as close if not closer ties to Site G including Wiese, Cerro, Mobil, Kerr-McGee, and Sauget. Both Cerro and Wiese are current owners of the site and owned the site when disposals took place. They have benefited from the cleanup of Site G while other PRPs have not.

*The E&E costs under contract #68-W8-0086 ($205,614.00) were not included for reasons set forth earlier in the attached letter.

Further, there is clearly a large orphan share for Site G. A great deal of midnight dumping occurred at this site. The wastes disposed of there could have come from anywhere. See attached memo.

Based on this, the following is a more appropriate cost for Monsanto to pay on Site G removal costs:

EPA costs:	$ 602,829.68
minus	
Orphan share (based on EPA Orphan Share Policy 25%):	$ 155,207.42
Cost remaining:	$ 447,622.26
Share for each of 5 Demand Letter recipients	$ 89,524.45**

Area 1 (minus Site G 1995 removal)

While EPA incurred $217,099.69 in general Area 1 work in the past, it is important to realize the amount that Monsanto/Solutia has spent. See Table 1 attached. Very important is the fact that Monsanto is the only PRP to undertake significant response/investigatory action in Sauget on property it has never owned. Monsanto has done sampling, it assisted in paying for the fence at site G and it has now committed to perform the RI/FS and EE/CA.

Not only has Monsanto incurred, or will incur the above-mentioned costs, it also paid for a significant share of the cleanup undertaken by Cerro on its property. As you know, in 1990 Cerro undertook action to cleanup Dead Creek Segment A. It was discovered in the subsequent litigation between Cerro and Monsanto that there were several reasons for Cerro's actions, all based on the fact that as late as the end of the 1980's, Cerro had direct discharge of process waste water into creek sector A. One of the most important problems was posed by RCRA because of the determination that sector A was a hazardous waste impoundment for Cerro's materials. The creek was also a Clean Water Act problem for Cerro until it was closed. Thus, Cerro undertook the cleanup of Segment A in large part to address its own regulatory violations on its property. Despite this fact, under the settlement of the case, Monsanto paid a seven figure settlement.

In addition to all the above, Monsanto has agreed to pay EPA's oversight costs for the RI/FS and EE/CA. This is in spite of the fact that there is a large number of

**Despite Cerro & Wiese's ongoing ownership, Solutia will be conducting, on its own, further testing and evaluation of Site G. When this is taken into consideration, a per capita approach is inappropriate.

known PRPs and in spite of the fact that there is a large orphan share for much of the area contamination.

PRPs include all those entities who disposed of materials in area landfills and into the sewer system in Sauget which backed up into Dead Creek, or flowed directly into the creek. Landfills took all kinds of material from a wide variety of parties. A review of the invoices of Sauget and Co. for the early 1970's show that large numbers of parties were using Sauget and Co. for disposal of their wastes.

Disposals into the creek were from many parties. The entire Sauget sewer system was designed to use the creek for relief when the sewers were surcharged. Mr. Salwasser, an expert in sewers who had worked on the Village of Sauget sewers and who testified during the *Cerro v. Monsanto* trial, indicated that it was his opinion that any party who discharged wastes into a Village of Sauget sewer could have had its waste discharged into Dead Creek. In addition, companies such as Cerro, Midwest Rubber, and Waggonner discharged directly into the creek.

While the entire population in Sauget discharged into Dead Creek, the Village and its Mayor were intricately involved in many if not all of the involved sites. The Mayor bought property in the 1950's from which gravel was excavated and sold for fill material to various entities. After the excavation was complete, the Mayor then charged parties to dispose of their wastes in the excavations. Thus the landfill sites were very profitable for the Mayor.

The Village profited greatly from the availability and use of Dead Creek as part of its sewer system. Without Dead Creek, the Village would have had to incur large additional costs in sewer construction. The creek allowed the Village to avoid such costs for many years. Today the creek is still used as a storm sewer for the villages of Sauget and Cahokia. Without extensive sewer work, the creek can not be filled in without causing huge flooding problems.

Based on the amount of work Monsanto/Solutia has already done relating to Area 1, and based on the liability of many of the other parties, Monsanto/Solutia has already paid its fair share of the total costs incurred to date in Area 1. When the estimated costs for the EE/CA and RI/FS are added, Monsanto/Solutia will have incurred much more than its share of costs.

Table 1 shows what the Monsanto/Solutia costs have been to date in comparison to the EPA costs. Table 2 is a more detailed accounting of Monsanto/Solutia's costs.

TABLE 1

COMPARISON OF EPA COSTS V. MONSANTO/SOLUTIA COSTS

EPA COSTS		
Site G		
	Internal costs	$203,179.74
	Contractor costs	$409,692.94
	IEPA Cooperative Agreement	$7,957.00
Area 1		
	Internal costs	$ 98,718.87
	Contractor costs	$309,996.82
	IEPA Cooperative Agreement	$ 13,998.00
	TOTAL	$1,043,543.30

MONSANTO COSTS	
Estimated cost:	
RI/FS & EE/CA	$3,000,000.00
Cost incurred to date:	
Outside consultant/ engineers fees	$ 347,966.00
Fence around G	$ 3,946.00
In house engineering including project management and engineering work	$ 260,844.00
TOTAL	$3,612,756.00*

*This total does not include the seven plus dollar amount Monsanto paid in the settlement of the *Cerro* litigation.

TABLE 2

MONSANTO/SOLUTIA ITEMIZED COSTS FOR AREA 1

Environmental Consultants through 7/98

1.	Geraghty & Miller	$145,534
2.	Henry Godt	$ 11,000
3.	De maximis	$ 6,585
4.	Connestoga-Rovers & Assocs. SRP Cost Estimate (consulting engineering services)	$ 49,216
5.	Savannah Labs-Analytical	$ 14,282
6	Blasland, Bouck & Lee, Inc. (consulting engineering services)	$33,712
7	Waste Disposal Service	$ 1,714
8	Geraghty & Miller	$ 64,067
9	Geraghty & Miller	$ 6,510
	TOTAL:	**$332,620**

Solutia personnel time, through 7/98

1	In House Engineering	**TOTAL**	**$189,694**

Outside costs 8/1/98 to date

2	Environmental Consultants fee	**TOTAL**	**$ 15,346**

Solutia personnel time, 8/1/98 to date

1.	Steve Smith, Manager, Remedial Projects [redacted]	$ 5,500
2.	Michael House, Hydrogeologist [redacted]	$ 3,325
3.	Michael Light, Manager, Remedial Projects [redacted]	$ 44,750
4.	Bruce Yare, Manager, Remediation Technologies (hydrogeologist) [redacted]	$ 17,575
	TOTAL:	**$ 71,150**

GRAND TOTAL **$608,810***

*This number does not include the fence around Site G.

MONSANTO'S RESPONSE TO EPA'S SITE G DEMAND LETTER

Factual Background

Site G is approximately 4.5 acres in size and is located west of Dead Creek, south of Queeny Avenue in Sauget, Illinois. Based on aerial photos analyzed by IEPA, there was no evidence of disposals of any kind at Site G until 1950, when a pit was identified. See Ron St. John Report, Figures 3a-3e (drawings of aerial photos).[1] Prior photos (1937 and 1940) do not identify this pit or any disposals. The Site G pit was dug to remove earth to build up the bed for New Queeny Avenue. Silverstein 4/24/95 Depo., p. 98. New Queeny Avenue was built somewhere between 1948 and 1955. (Based on records regarding land transfers of this property and aerial photos from the Ron St. John 1981 report.) EPA states that the site operated from 1952 to the late 1970s. EPA 1992 CERCLA Site Screening, p. 2-2.

Based on the St. John diagrams made from the aerial photos, the pit excavated by Sauget is entirely on Cerro property. EPA has defined the site as being somewhat larger than the Cerro property, although apparently not extending south beyond the Weise property.

Several environmental related investigations of the site have occurred over the years. The investigations have been documented in the 1981 Ron St. John Report, the 1988 "Expanded Site Investigation" by Ecology and Environment ("E&E" Report"), and the EPA's 1994 Removal Action Report.

In May of 1987 Monsanto voluntarily stepped forward to fence in Site G. This was done despite the fact that EPA had no evidence to show that Monsanto had a connection to the Site.

[1] Ron St. John developed the first study of the Sauget area in *A Preliminary Hydrogeologic Investigation in the North Portion of Dead Creek and Vicinity*, April, 1981.

In 1995, a removal action was undertaken at the site by U.S. EPA. Up until the initiation of the removal action, the government acknowledged it did not have enough evidence to pursue any PRPs. Sam Borries stated in Polrep #1, March 28, 1995:

> At this time it is believed by the Agencies that issuing an order is unwarranted due to a lack of significant evidence to keep the PRPs involved.

At the time that Mr. Borries made that statement, EPA had an extensive amount of information on the contaminants at the site, but it had nothing further.

In Cerro v. Monsanto, the lawsuit Cerro filed against Monsanto regarding Dead Creek Segment A, a long time Cerro engineer, Sandy Silverstein, testified about his knowledge of Site G. Silverstein worked for Cerro from 1946-1971 and 1981-1989. He stated in deposition:

> I know that Leo Sauget did not operate a dumping operation there. [Referring to Site G]. Let me say, I am familiar with Leo's dumping operations, north of Queeny Avenue, and I met Leo a number of times, on various matters, but at no time was I – did I have reason to believe he was open dumping in that area . . . I think there was an area where it was mostly midnight dumping.

Silverstein Depo., 4/24/95, pp. 98-100. Silverstein also stated with regard to G that:

> I would imagine that anyone who had some waste material to get rid of downtown St. Louis, it was East St. Louis. They would be headed down Route 3 and the first place they get – place without civilization would be Queeny Avenue, and they just turn up and just a short distance away there is an open area where dumping was taking place in Leo Sauget's burning pits and there was evidence of dumping having been done before and that sure seemed to be – this would be a likely place for them to get rid of whatever they wanted to get rid of there.

Silverstein Depo., 6/14/94, pp. 143-144. Silverstein, a person who was knowledgeable regarding the operations of Site G, never observed or knew of any waste disposal/landfill operations on Site

G. The fact that G was not operated as a landfill by Sauget explains why EPA has found no evidence regarding disposals at the Site (i.e. Sauget invoices, waste in lists, etc.).

During the 1995 removal action, EPA recovered various items which it apparently now feels is strong enough evidence to tie Monsanto to the site. This evidence includes the following:

- 25 empty 50 lb. bags of "Monsanto Penta"
- Approximately 57 label stencils for various aroclors, dykanol-A, glycidal phenyl ether, etc.
- Receiving reports for Monsanto Chemical Co.
- Operations Manual for "Monsanto Chemical Company"
- Steel Barrel Co. receipts for the shipment of empty drums to Monsanto Chemical Co.
- Mulligan printing receipt to Monsanto
- American Chemical Society letter to Monsanto Chemical Co.
- Letter from Instrument Engineering Co. to Monsanto Chemical Co.
- Orvill Simpson Co., letter to Monsanto Chemical Co.
- Outbound freight receipts from Monsanto Chemical Co.

See 7/7/95 fax from Smith Environmental. Based on photographs given to Monsanto by EPA, an empty bag of Santomerse No. 1 was also found at the site.

Legal Argument

Under CERCLA, the government must prove by a preponderance of the evidence that Monsanto's waste was disposed of at Site G and that hazardous substances similar to those found in Monsanto's waste were present at the site at the time of release. See, e.g., Dana Corp. v.

American Standard, Inc., 866 F. Supp. 1481, 1493-94 (N.D. Ind. 1994) (citations omitted).[2] Here, even though circumstantial evidence may permissibly be aggregated to establish liability even where the individual pieces of evidence would be insufficient, see NutraSweet Co. v. X-L Engr. Corp., 933 F. Supp. 1409 (N.D. Ill. 1996), EPA can not establish Monsanto's liability for Site G.

Liability will not result if the government's evidence amounts to little more than speculation. Acme Printing Ink Co. v. Menard, Inc., 891 F. Supp. 1289, 1297-98 (E.D. Wis. 1995); Dana Corp., 866 F. Supp. at 1497-98. The government has the burden of proof as to each element of its claim, meaning that a defendant must simply establish that the evidence is insufficient to prove those elements. Dana Corp., 866 F. Supp. at 1494. The defendant does not have to prove that the government's claims are not true. Id.

In Acme Printing Ink Co. v. Menard, Inc., 870 F. Supp. 1465, 1485-86 (E.D. Wis. 1994), the court found that the evidence concerning a generator's waste was insufficient to establish liability. The plaintiff in Acme Printing argued that because the generator had no record that anyone other than Ed's Trucking (which hauled materials to the involved site) disposed of its drummed chemical waste during the requisite time period and that the pollutants contained in the generator's waste stream were consistent with the hazardous substances found at the site, then one could infer that the generator's waste "must have been" disposed of at the site. Id. at 1485. The generator presented affirmative evidence (depositions of Ed's Trucking personnel and Ed's invoices) that its waste was disposed of elsewhere. The court concluded that the plaintiff had not introduced sufficient evidence to rebut the defendant's affirmative evidence of disposal

[2] The burden of proof is the same whether the plaintiff is the government or a private party. Premium Plastics v. LaSalle Natl. Bank, 904 F. Supp. 809, 814-15 (N.D. Ill. 1995).

elsewhere. Id. On the other hand, where the plaintiff presented evidence that the hauler's practice was to dispose of fill at the site and where another defendant in the case acknowledged that its fill was hauled by Ed's, and acknowledged that its contaminated fill could have been hauled by Ed's, the court declined to enter summary judgment that the particular defendant was not liable. Id. at 1497.

Even more instructive of what type and amount of evidence, in the absence of direct evidence, is sufficient to find a defendant liable under CERCLA is found in Dana Corp., supra. Before applying the applicable standard to the specific facts and parties before it, the court held that:

> If the plaintiff demonstrates that the defendant produced a continuous and predictable waste stream that included hazardous constituents of the sort eventually found at the site, and that at least some significant part of that continuous and predictable waste stream was disposed of at the site, the factfinder reasonably may infer that the defendant's hazardous waste was disposed of at the site. If the plaintiff cannot demonstrate such a continuous and predictable waste stream, or is unable to show that a significant part of the defendant's waste stream reached the site, the plaintiff must present some further evidence to justify a reasonable factfinder in inferring that the defendant contributed to the hazardous waste at the site.

Dana Corp., 866 F. Supp. at 1489. The court then proceeded to examine the parties utilizing this standard. It found that 9 of the 10 defendants examined warranted the grant of summary judgment, despite the fact that in this summary judgment proceeding all reasonable inferences from the evidence were drawn in favor of the plaintiffs as the non-movants.

The Dana Corp. court was fairly rigorous in the proof it demanded from the plaintiffs. Speculation, as in "anything's possible," was flatly rejected. See, e.g., Dana Corp., 866 F. Supp. at 1506. Even testimony that one company sent 30 to 40 "empty" drums to the site was rejected as a basis for liability because the truck driver who delivered the drums did not know the

contents of the drums. Id. at 1511. Office floor sweepings contained in roll-offs sent to the site were rejected as a basis for liability because there was no evidence that they contained hazardous substances. Id. at 1512. In another defendant's situation, the court held that "the most the evidence shows is that [the defendant] may have generated some waste containing hazardous substances, and that some of the [defendant's] waste was taken to the Site, but it does not necessarily follow that the waste actually taken to the Site contained hazardous substances." Id. at 1518.

All the items found at Site G during the 1995 removal which EPA has attributed to Monsanto, other than the empty pentachlorophenol bags ("penta") and the Santomerse #1, are trash. There is no evidence that the trash contained a hazardous substance. This leaves only the penta bags and the bag of Santomerse #1 to attach liability to Monsanto.

Monsanto produced penta at the W.G. Krummrich ("WGK") plant from 1938-1978.[3] The material was packaged in pre-marked bags and shipped to purchasers. The penta bags would not have been disposed of by Monsanto, but rather used for packaging of product.[4] Filled product bags were shipped to customers. If Monsanto had off-spec product that it was disposing of, it would have discovered this prior to packaging. It would have had no reason to put off-spec product in product bags for disposal. Thus, the penta bags found on site could not have been Monsanto's, particularly since product residue was found in the bags. Clearly, the bags came

[3] The Queeny Plant undertook a pilot project for PCP production from 1936 to 1938. In October of 1938 the process was transferred to Krummrich.

[4] If the bags had been disposed of prior to filling with product, they would not have been a CERCLA hazardous substance because they would not have contained any penta.

from a Monsanto customer after the bags were emptied at the customer's property and were then sent off site as waste.

There is a potential source of the empty penta bags in Sauget, the old T.J. Moss Tie Company facility. T.J. Moss' operations involved the impregnating of railroad ties, telephone poles, etc., with wood treating compounds. This facility, which has undergone significant cleanup and which IEPA has been aware of for years, used over 500 pounds of dry penta per day in its processes. See Attachment. Monsanto documents indicate that its company that marketed the penta, Wood Treating, sold penta to Moss American. Thus, the empty bags of penta found at G, which could not have come from Monsanto could well have originated from T.J. Moss. Even if the bags did not come from T.J. Moss, Monsanto is not implicated because Monsanto would not have disposed of penta bags. Further, there were other users of Monsanto penta that could have discarded the emptied bags at Site G through midnight dumping.

We do not know if EPA found product in the Santomerse #1 bag. If it did, the bag must have been disposed of by a Monsanto customer. If it did not find any hazardous substance in the bag, then there is no evidence of disposal of a hazardous substance. See supra.

Monsanto has admitted that it used dialate in its processes in its response to EPA's 104(e) request. EPA found an empty bag of dialate at the site. Merely because a dialate bag was found is not evidence of the disposal of a hazardous substance. In fact, all available evidence in Monsanto documents and witness testimony in other cases indicates that Monsanto used filter aid such as dialate in some of its plant processes. An empty bag of filter aid only indicates that a bag that had contained clean filter aid was disposed of. It is not evidence of the disposal of contaminated filter aid. In addition, many other companies used dialute in their processes as a filtration material.

Because neither the penta nor the Santomerse came from Monsanto, the only new evidence EPA found at the site during the 1995 removal against Monsanto was non-hazardous office-type trash.[5] The presence of trash without any evidence of a hazardous substance associated with it is not sufficient evidence of disposal of hazardous substances. Acme, supra; Dana, supra.

Further, Monsanto has given to the government the various sites its hazardous wastes have been disposed of over the years. Its notifications to the government in 1979 identify use of a landfill on Falling Springs Road. The aerial photos from the Ron St. John Report indicate that there were disposals in the area along Falling Springs Road near Sauget Village Hall. Thus, the disposals referenced by the Monsanto reports were at the areas by the Village Hall. There is no evidence that Monsanto disposed of material at Site G.

In reports to the government and in other Monsanto documents given to the government in 104(e) responses, Monsanto never identified Site G, or a landfill along New Queeny Avenue as a disposal location. Thus, EPA continues to have insufficient evidence to prove that liability attaches to Monsanto at Site G.

The only other possible argument EPA has to hold Monsanto liable for Site G is based on an argument that the contaminants at Site G are a fingerprint to Monsanto materials. But this argument fails too. Based on the similarity of the contaminants at Site G and Site L, there is an explanation for the presence of materials at Site G. In 1963 Harold Waggoner & Co. bought parcels located between Falling Springs Road, Nickel and Queeny Ave., just south of Site H

[5] In the office trash were numerous label stencils. These stencils did not come from the production areas for the various products, but rather from an area designated for drum labeling. All drums for the plant were labeled in this area. The drums were then sent to the particular process area. As paper trash, these would have been disposed of in a manner similar to the office trash disposal.

(Site L). Waggoner operated a trucking operation which used this property for cleaning of the trucks. Based on testimony of Don Mayer in the Cerro lawsuit, Waggoner was trucking product for Monsanto before the purchase of Site L. All the contaminants alleged to be traceable to Monsanto were either products or constituents in products that could have been or were hauled by Waggoner. Where the Waggoner operations were prior to 1963 is not known at this time. It is possible that Waggoner used Site G for disposals.

However, Waggoner hauled only product for Monsanto, not waste. In such circumstances, Monsanto should not be liable for any contamination caused by the rinsing of any Waggoner trucks. Monsanto's intent behind transactions with Waggoner was for product transfer to customers, not disposal.

Such a fact scenario does not result in liability for Monsanto. Monsanto merely hired a trucking company to deliver product to its customers. It did not arrange for rinsing the materials on the ground during tank cleaning operations. Thus, it can not be found liable for such actions by Waggoner. Amcast Industrial Corp. v. Dextrex Corp., 2 F.3d 746 (7th Cir. 1993). As noted by the Seventh Circuit in Amcast, the "arranged for" language in the CERCLA statute implies intentional action. Id., at p. 751. There was no intentional action by Monsanto to dispose of its products in any of the Sauget Sites. Rather its intent was to contract with a hauler to get its products to its customers. See also, South Florida Water Mgmt. Dist. v. Montalvo, 84 F.3d 402, 407 (11th Cir. 1996); United States v. Cello-Foil Products, Inc., 100 F.3d 1227, 1232 (6th Cir. 1996). The government has no evidence that would prove the intent requirement mandated by Amcast.

In sum, the government's evidence is simply too weak to establish by a preponderance of the evidence, as is required, that Monsanto's hazardous substances were deposited at Site G.